

REMARKS

The Applicant respectfully requests reconsideration and allowance of claims 1 through 24 in view of the above amendments and the arguments set forth below.

1. STATUS OF THE CLAIMS

The present application was originally filed with claims 1 through 27. Claims 6, 7, 8, 19, 20, and 23 are amended above to place the claims in better form. These amendments are not intended to in any way change the scope of the respective claims. Claims 25 through 27 are withdrawn from consideration without prejudice in view of the restriction requirement, leaving Claims 1 through 24 pending in the case.

II. THE CLAIMS ARE NOT UNPATENTABLE UNDER THE DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING

The Examiner rejected Claims 1 through 24 under the doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,379,728 (the “728” patent) in view of U.S. Patent No. 4,171,164 to Groves et al. (the “Groves patent” or “Groves”). The Applicant traverses these rejections on the ground that the 728 patent and the prior art provides no teaching, suggestion, or motivation to make the proposed combination. Furthermore, many of the claims require elements that are not taught or suggested by the proposed combination and are thus not obvious in view of the proposed combination.

The claims of the 728 patent are all directed to a method for modifying the pH of a foodstuff by combining two different foodstuffs to produce a third foodstuff having a target pH.

1 The Groves patent discloses a meat processing system having input grinders that may receive
2 both frozen meat trimmings and fresh meat trimmings.

3 The present independent claims, claims 1 and 18, require first forming an intermediate
4 combination comprising a plurality of pieces of a frozen first meat product and a quantity of an
5 unfrozen second meat product having a pH different from the first meat product, and then mixing
6 the intermediate combination. While it is correct that the Groves patent discloses that frozen
7 meat trimmings may be combined in a grinder with fresh meat trimmings, there is no suggestion
8 anywhere in the art to modify only one input stream claimed in the 728 patent so that it is made
9 up of frozen material while the other input stream is made up of nonfrozen material. That is,
10 Groves makes no distinction as to any differences in the meat streams going into the grinder
11 other than one originates as frozen meat and the other originates as fresh meat. There is no
12 suggestion in Groves to change the pH modifying method set out in the 728 patent so that one
13 input stream in the claimed method is frozen while the other is unfrozen.

14 Because the prior art does not provide any teaching, motivation, or suggestion to make
15 the proposed combination of the invention claimed in the 728 patent and the features disclosed
16 Groves patent, the Applicant submits that the claims of the present application are not
17 unpatentable under the doctrine of obviousness-type double patenting.

18 19 The Dependent Claims

20 Many of the dependent claims of the present application include limitations that are not
21 taught or suggested by the proposed combination of the 728 patent and the Groves patent. Thus,

1 these dependent claims are allowable both as being dependent on an allowable base claim and for
2 the limitations that they directly add.

3 In particular, claims 2-5, 9-12, and 19-21 all require the steps of forming an elongated
4 strand of the first meat product and freezing the elongated strand as set out in claims 2 and 19.

5 The cited references do not teach or suggest this limitation. Claims 7 and 8 each include
6 temperature limitations not taught or suggested by the prior art or the 728 patent. Claim 16
7 includes a material limitation and claims 17 and 24 include grind or particle size limitations that
8 are not taught by the prior art or the 728 patent.

9 For all of these reasons, Applicant believes that these dependent claims are also
10 independently allowable over the prior art of record.

1 III. CONCLUSION

2 For all of the above reasons, the Applicant respectfully requests reconsideration and
3 allowance of Claims 1 through 24. If the Examiner should feel that any issue remains as to the
4 allowability of these claims, or that a conference might expedite allowance of the claims, he is
5 asked to telephone the Applicant's attorney Russell D. Culbertson at the number listed below.

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7 Respectfully submitted,

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12 Dated: March 1, 2004

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22 CERTIFICATE OF FACSIMILE

23 I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, (Fax
24 No. 703-872-9310) on March 1, 2004.

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27 Reg. No. 32,124, Russell D. Culbertson 